

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF APPELLATE PROCEDURE***

Rule 4. Appeal as of right — When taken

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1 (b) Appeals in criminal cases. — In a criminal case the notice
2 of appeal by a defendant shall be filed in the district court within 10
3 days after the entry of (i) the judgment or order appealed from or
4 (ii) a notice of appeal by the government. A notice of appeal filed
5 after the announcement of a decision, sentence or order but before
6 entry of the judgment or order shall be treated as filed after such
7 entry and on the day thereof. If a timely motion in arrest of
8 judgment or for a new trial on any ground other than newly
9 discovered evidence has been made, an appeal from a judgment of
10 conviction may be taken within 10 days after the entry of an order
11 denying the motion. A motion for a new trial based on the ground of
12 newly discovered evidence will similarly extend the time for appeal
13 from a judgment of conviction if the motion is made before or
14 within 10 days after entry of the judgment. When an appeal by the
15 government is authorized by statute, the notice of appeal by the

*New matter is underlined; matter to be omitted is lined through.

FEDERAL RULES OF APPELLATE PROCEDURE

16 government shall be filed in the district court within 30 days after
17 the entry of (i) the judgment or order appealed from or (ii) a notice
18 of appeal by any defendant. A judgment or order is entered within
19 the meaning of this subdivision when it is entered in the criminal
20 docket. Upon a showing of excusable neglect the district court may,
21 before or after the time has expired, with or without motion and
22 notice, extend the time for filing a notice of appeal for a period not
23 to exceed 30 days from the expiration of the time otherwise
24 prescribed by this subdivision.

COMMITTEE NOTE

The Sentencing Reform Act of 1984 authorizes the government in specified circumstances to file a notice of appeal for review of an otherwise final sentence. 18 U.S.C. § 3742(b) (Supp. IV 1986). The proposed amendment permits and sets the time for cross-appeals in criminal cases, comparable to the provision in Rule 4(a)(3). Either side may notice an appeal within the time periods previously set forth in the rule but measured not only from the entry of judgment but also from the entry of the other side's notice of appeal. That is, the United States has 30 days from a defendant's filing of a notice of appeal to file a cross-appeal and a defendant has 10 days from the government's filing of a notice of appeal to file a cross-appeal. Without this amendment the government could notice an appeal after the time for a defendant's appeal had expired.

Rule 26. Computation and extension of time

1 (a) Computation of time.— In computing any period of time
2 prescribed or allowed by these rules, by an order of court, or by any
3 applicable statute, the day of the act, event, or default from which
4 the designated period of time begins to run shall not be included.
5 The last day of the period so computed shall be included, unless it is
6 a Saturday, a Sunday, or a legal holiday, in which event the period
7 extends until the end of the next day which is not a Saturday, a

FEDERAL RULES OF APPELLATE PROCEDURE

8 ~~Sunday, or a legal holiday.~~ or, when the act to be done is the filing
9 of a paper in court, a day on which weather or other conditions have
10 made the office of the clerk of the court inaccessible, in which
11 event the period runs until the end of the next day which is not one
12 of the aforementioned days. When the period of the time prescribed
13 or allowed is less than 7 days, intermediate Saturdays, Sundays, and
14 legal holidays shall be excluded in the computation. As used in this
15 rule "legal holiday" includes New Year's Day, Birthday of Martin
16 Luther King, Jr., Washington's Birthday, Memorial Day,
17 Independence Day, Labor Day, Columbus Day, Veterans Day,
18 Thanksgiving Day, Christmas Day, and any other day appointed as a
19 holiday by the President or the Congress of the United States. It
20 shall also include a day appointed as a holiday by the state wherein
21 the district court which rendered the judgment or order which is or
22 may be appealed from is situated, or by the state wherein the
23 principal office of the clerk of the court of appeals in which the
24 appeal is pending is located.

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COMMITTEE NOTE

The proposed amendment brings Rule 26(a) into conformity with the provisions of Rule 6(a) of the Rules of Civil Procedure, Rule 45(a) of the Rules of Criminal Procedure, and Rule 9006(a) of the Rules of Bankruptcy Procedure which allow additional time for filing whenever a clerk's office is inaccessible on the last day for filing due to weather or other conditions.

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 27. Motions

1 (a) Content of motions; response † reply. — Unless another
2 form is elsewhere prescribed by these rules, an application for an
3 order or other relief shall be made by filing a motion for such order
4 or relief with proof of service on all other parties. The motion shall
5 contain or be accompanied by any matter required by a specific
6 provision of these rules governing such a motion, shall state with
7 particularity the grounds on which it is based, and shall set forth the
8 order or relief sought. If a motion is supported by briefs, affidavits
9 or other papers, they shall be served and filed with the motion. Any
10 party may file a response in opposition to a motion other than one
11 for a procedural order [for which see subdivision (b)] within 7 days
12 after service of the motion, but motions authorized by Rules 8, 9, 18
13 and 41 may be acted upon after reasonable notice, and the court
14 may shorten or extend the time for responding to any motion.

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COMMITTEE NOTE

The amendment is technical. No substantive change is intended.